

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

AMBER CLACK,

Plaintiff,

v.

CAROLINA TRANSPORT OF
BURGAW, INC., HARLAN PARKER,
and GREAT DIVIDE INSURANCE
COMPANY,

Defendant.

CIVIL ACTION FILE

NO.: _____

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF GEORGIA:

COME NOW Defendants Carolina Transport of Burgaw, Inc., Harlan Parker and Great Divide Insurance Company ("Defendants") by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 81(c), and 28 U.S.C. §§ 1441, 1332 and 1446 et seq., and file this notice of removal from the State Court of Dekalb County, State of Georgia, Civil Action No. 18A72543. The Defendants show the Court the following grounds for removal:

1.

Plaintiff filed this action in the State Court of Dekalb County on December 27, 2018. True and correct copies of the Complaint filed in this action as of December 27, 2018, are attached hereto as [Exhibit "A"]. Defendant Carolina Transport of Burgaw, Inc. was served on January 7, 2019. *See* [Exhibit "B"]. Defendant Harlan Parker was served on December 31, 2018. *Id.* Defendant Great Divide Insurance Company was served on December 28, 2018. *Id.*

2.

Defendant Harlan Parker is a citizen of the State of North Carolina. *See* [Plt's Compl. ¶ 6, Exhibit A]. North Carolina is Defendant Parker's true, fixed, and permanent home and principal establishment. Parker's permanent address is 741 Holly Shelter Road, Jacksonville, North Carolina 28540.

3.

28 U.S.C. § 1332(c)(1) states that for diversity purposes, a corporation is a citizen of both the state in which it has its principle place of business and its state of incorporation. Great Divide Insurance Company is a foreign corporation incorporated in the State of North Dakota and also maintains its principle place of business in Grand Forks, North Dakota.

4.

Carolina Transport of Burgaw, Inc. is a foreign corporation incorporated in the State of North Carolina and maintains its principle place of business at 340 Ed Cowan Road, Burgaw, North Carolina 28425.

5.

Plaintiff Amber Clack is a citizen of the State of Georgia. She maintains a Georgia address 6549 East Windsor Lane, Norcross, Georgia 30093 and also has a Class C Georgia driver's license. Plaintiff maintains a Georgia registration out of Gwinnett County, Georgia. Georgia is Plaintiff's true, fixed, and permanent home and principal establishment.

Removal Based on Diversity Jurisdiction Pursuant to 28 U.S.C. § 1441

6.

This Court has original jurisdiction of this matter pursuant to 28 U.S.C. §1332 and this matter may be removed to this Court under 28 U.S.C. § 1441(a).

Description of Suit

7.

Plaintiff brought suit against Defendant Harlan Parker based on negligence. Specifically, Plaintiff alleges that on March 23, 2017, Plaintiff was operating a 2015 Chevrolet Malibu travelling eastbound on I-285 in Dekalb County, Georgia. *See [Plt's Compl. ¶ 18, Exhibit A]*. At or around the same time, Plaintiff alleges

that Defendant Harlan was driving a 2012 Freightliner Continental tractor trailer and negligently attempted to change lanes into Plaintiff's lane causing a collision.

Id.

Plaintiff asserts claims against Carolina Transport of Burgaw, Inc. ("Carolina Transport") under the theory of *respondeat superior*. See [Plt's Compl. ¶ 18, Exhibit A]. Plaintiff further alleges the Penske Defendants are liable under the theory of negligent hiring, retention and supervision. See [Plt's Compl. ¶ 21, Exhibit A].

Lastly, Plaintiff alleges that Defendant Great Divide Insurance Company is liable under "Georgia's direct-action statutes." See [Plt's Compl. ¶ 39, Exhibit A].

Defendants Consent to the Removal

8.

The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and it requires that all Defendants consent to the removal. Cook v. Randolph County, Ga., 573 F.3d 1143 (11th Cir. 2009); Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants' Local 349, 427 F.2d 325, 326-327 (5th Cir. 1970).

9.

All Defendants consent to this removal.

The Amount in Controversy Requirement

10.

Plaintiff's Complaint asserts that Plaintiff will need future medical expenses exceeding \$90,000. In addition, Plaintiff claims past, present, and future pain and suffering, past, present, and future lost wages and economic damages, past, present, and future medical expenses, disability, disfigurement, mental anguish, lost ability to labor, and punitive damages. *See generally* [Plt's Compl., Exhibit A]. Prior to litigation, the Plaintiff demanded \$400,000 to settle this case. Therefore, the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See Lee v. Kisen*, 475 F.2d 1251 (5th Cir. 1973) ("to justify dismissal by the Court, it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.").

The Diversity of Citizenship Requirement

11.

Plaintiff is a Citizen of the State of Georgia. There is complete diversity of citizenship.

Compliance with Deadline for Removal

12.

The deadline for filing this removal without leave of court is controlled by the first paragraph 28 U.S.C. § 1446(b). Based on the first paragraph of 28 U.S.C.

§ 1446(b) this notice of removal is timely filed.

The State Court Proceeding

13.

The state court proceeding is identified as follows: *Amber Clack v. Carolina Transport of Burgaw, Inc., et al.* Civil File Action Number 18A72543 in the State Court of Dekalb County, Georgia. A Notice of this Removal will be filed as Exhibit “A” to Defendants’ Notice of Removal filed in Dekalb County State Court.

All State-Court Documents

16.

All state-court documents required to be filed with this notice are attached hereto.

WHEREFORE, Defendants wish to exercise their right under the provisions of 28 U.S.C. § 1441, *et. seq.* to remove this Action from the State Court of Dekalb County, Georgia, to the United States District Court, Northern District of Georgia.

Respectfully submitted, this the 25th day of January, 2019.

NALL & MILLER, LLP

BY: /s/ Walter B. Yarbrough
MICHAEL D. HOSTETTER
Georgia Bar No. 368420
WALTER B. YARBROUGH
Georgia Bar No. 780353

**ATTORNEYS FOR ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **DEFENDANTS' NOTICE OF REMOVAL** and has been served on counsel of record with the Clerk of Court using the CM/ECF system pursuant to L.R. 5.1, which will automatically send e-mail notification of such filing to the following attorneys of record:

James A. Rice, Jr.
James A. Rice, Jr., P.C.
563 Spring Street, NW
Atlanta, Georgia 30308

This 25th day of January, 2019.

/s/ Walter B. Yarbrough
WALTER B. YARBROUGH
Georgia Bar No. 780353